

The clock will soon begin running for companies that are required to report data under US EPA's Chemical Data Reporting (CDR) rule on the chemical substances they manufacture and import pursuant to the Toxic Substances Control Act (TSCA). Under the rule, the reports must be submitted to US EPA between June 1 and September 30, 2016. Entities subject to the CDR rule must submit all data required for the current reporting cycle (which covers calendar years 2012-2015) during this four-month window or face an enforcement action by the agency.

Entities Covered

The CDR applies to a wide array of chemical manufacturers and importers, including:

- Organic and inorganic chemical manufacturers and importers
- Petrochemical manufacturers, petroleum refineries
- Paint and coatings manufacturers
- Pigment and dye manufacturers
- Alkalies and chlorine manufacturers
- Ink manufacturers
- Fertilizer manufacturers
- Paper and cardboard manufacturers
- Iron and steel mills
- Nonferrous metals smelters
- Foundries
- Electronic component and semiconductor manufacturers
- Printed circuit manufacturers
- Utilities and electric power generators
- Many other users, manufacturers, importers and processors of chemical substances

Production Volume Information

For the 2016 reporting period, a manufacturer (including importer) of chemical substances must report production volume data (which includes the amount domestically manufactured plus imported volumes) for each chemical substance where 25,000 lbs. or more of the chemical was manufactured or imported at any single site in any single calendar year during 2012-2015.

Specific chemical substances that are the subject of particular rules, orders and/or actions under TSCA are also subject to the CDR rule reporting requirements if they are manufactured or imported in volumes of 2,500 lbs. or more at any single site in any single calendar year during 2012-2015. The TSCA conditions that trigger this lower reporting threshold are: (i) a rule proposed or promulgated under TSCA sections 5(a)(2), 5(b)(4) or 6; (ii) an order in effect under TSCA section 5(e) or 5(f); (iii) relief that has been granted under a civil action under TSCA section 5 or 7; or (iv) an enforceable consent agreement. The applicability of these conditions is assessed based on the status of the chemical substance at the beginning of the submission period (i.e., June 1, 2016).

For any chemical substance subject to the reporting requirement, the production volume must be reported for each year covered by the 2016 rule (2012-2015).

For each site, manufacturers (including importers) must report the total annual production volume for each year covered by the 2016 rule (2012-2015). For 2012, 2013 and 2014, the total production volume (domestically manufactured plus imported) must be reported. For 2015, manufacturers (including importers) must separately report the domestically manufactured and imported production volumes.

Processing and Use Information

A manufacturer (or importer) must also report processing and use information for any chemical substance covered by the 2016 rule that it manufactured (including imported) in the amount of 25,000 lbs. or more at a site during 2015. The reporting threshold is 2,500 lbs. or more for chemicals substances that are subject to the specified TSCA rules, orders and/or actions. Processing and use information must be reported only for 2015, however, not all four years.

Processing and use information must be reported if it is "known to or reasonably ascertainable by" the reporting entity.

For industrial processes and uses, the information to be submitted includes:

- The type of industrial processing or use operation(s) at each site that receives a reportable chemical substance;
- The applicable industrial sector code for each processing and use operation;
- The manner in which the chemical substance is used;
- The estimated percentage of the total production volume of the chemical substance(s) associated with each combination of industrial processing and use operation;

- Industrial sector and industrial function, the number of sites at which each reportable chemical substance is processed or used; and
- An estimate of the number of workers reasonably likely to be exposed to the chemical substances.

For consumer and commercial uses of chemical substances:

- The rule requires that the data for consumer and commercial be separated, with the use being identified as either consumer or commercial.
- Entities submitting data must determine, within each consumer and commercial product category, whether any amount of each reportable chemical substance manufactured (or imported) by the entity is present in or on any consumer products intended for use by children age 14 or under, regardless of the concentration of the chemical substance in or on the product.
- Entities submitting data also must estimate the percentage of the submitter's site's total production volume of the reportable chemical substance associated with each consumer and commercial product category.
- When a chemical substance is used in a commercial product, the rule requires that the number of commercial workers reasonably likely to be exposed to the subject chemical substance be reported.

Other Technical Data That Must Be Reported

In addition to the basic production volume information, manufacturers (including importers) must report:

- Detailed information on the name and address of the parent company;
- The name of a technical contact for the data being reported;
- The current Chemical Abstracts (CA) Index Name used to list the chemical substance on the TSCA Inventory, as part of the chemical identity (Note: there are particular requirements for reporting chemical identity for chemicals on the confidential portion of the TSCA Inventory);
- The volume of a manufactured (including imported) chemical substance used at the reporting site;
- Whether an imported chemical substance is physically present at the reporting site; and
- The volume of each chemical directly exported and not domestically processed or used.

Requirements for Reporting Byproducts

The definition of "manufacture" in the CDR rule includes the "extraction, for commercial purposes, of a component chemical substance from a previously existing chemical substance or complex combination of substances."

Byproducts of the manufacture, processing, use or disposal of another chemical substance or mixture are subject to reporting under the CDR rule.

Manufacturers (and importers) must report whether a chemical substance, such as a byproduct, is to be recycled, remanufactured, reprocessed or reused. Companies must indicate whether the chemical substance, which otherwise would be disposed of as a waste, is being removed from the waste stream and has a "commercial purpose."

Information about whether a manufactured chemical substance, such as a byproduct, is to be recycled, remanufactured, reprocessed or reused must be reported in addition to any required information associated with any chemical substances manufactured from the byproduct.

Requirements for Confidential Business Information Claims

Upfront substantiation is required for Confidential Business Information (CBI) claims for processing and use information, as well as for site identity and chemical identity. CBI claims must be made at the time of submission and substantiated. Otherwise, the information is deemed non-confidential.

Under EPA's general CBI regulation, business information is entitled to confidential treatment if:

- The company shows that it has taken reasonable measures to protect the confidentiality of the information and that it intends to continue to take such measures;
- The information is not, and has not been, reasonably obtainable without the company's consent by other persons (other than governmental bodies);
- No statute specifically requires disclosure of the information; and
- The company shows that disclosure of the information is likely to cause substantial harm to its competitive position.

The CDR imposes additional requirements for CBI claims relating to chemical identity, site identity, or processing and use information.

For chemical identity, the manufacturer (or importer) must address, among other things:

- The potential harmful effect to its competitive position from disclosure.
- How long confidential treatment should be given.
- Whether the chemical substance been patented.
- Whether any competitors know that the substance is being manufactured or imported for a commercial purpose.
- The measures taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose.
- Whether the chemical substance be identified by analysis of the product.

For site identity, the manufacturer (or importer) must address, among other things:

- Whether site information been linked with a chemical identity in any other federal, state or local reporting program (such as EPCRA).

- The potential harmful effect to its competitive position from disclosure.

For processing and use information, the manufacturer (or importer) must address, among other things:

- The potential harmful effect to its competitive position from disclosure.
- Whether the identified use of the chemical substance is publicly known.

US EPA will disallow confidentiality claims for processing and use data if the data is just identified as not “known to or reasonably ascertainable.”

Small Manufacturer Exemption

A small manufacturer (or importer) is exempt from the 2016 CDR reporting requirement, if:

- Its total sales during 2015, combined with those of its parent company, are less than \$4 million, regardless of its annual production volume of the chemical substance; or
- Its total sales during 2015, combined with those of its parent company, are less than \$40 million and its annual production volume of the chemical substance does not exceed 100,000 lbs. at any individual plant site. If the annual production volume exceeds 100,000 lbs. at any sites, the manufacturer (or importer) is required to report only for those sites.

For purposes of calculating total annual sales, all sales of the company must be included, not just the sales of a given chemical substance.

The small manufacturer exemption does not apply, however, to any chemical substance that is the subject of the particular TSCA rules, orders and/or actions noted above.

Electronic Reporting Required

All data must be reported to US EPA electronically, using US EPA's web-based reporting tool (e-CDRweb) to submit CDR reports through the internet to US EPA's Central Data Exchange (CDX). Paper submissions are not accepted.

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